



[4337-15]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/A0A501010.999900253G]

25 CFR Parts 140, 141, 211, 213, 225, 226, 227, 243, and 249

RIN 1076-AF35

Civil Penalties Inflation Adjustments; Annual Adjustments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This rule provides for annual adjustments to the level of civil monetary penalties contained in Bureau of Indian Affairs (Bureau) regulations to account for inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget (OMB) guidance.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary – Indian Affairs; telephone (202) 273-4680, elizabeth.appel@bia.gov.

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I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Public Law 114-74) (“the Act”). The Act requires Federal agencies to adjust the level of civil monetary penalties with an initial “catch-up” adjustment through rulemaking and then make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

The Office of Management and Budget (OMB) issued guidance for Federal agencies on calculating the catch-up adjustment. *See* February 24, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, re: *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (M-16-06). Under the guidance, the Department identified applicable civil monetary penalties and calculated the catch-up adjustment. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation, and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review.

The calculated catch-up adjustment is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI0-U) for the month of October in the year of the previous adjustment (or in the year of establishment, if no adjustment has been made) and the October 2015 CPI-U.

The Bureau issued an interim final rule providing for calculated catch-up adjustments on June 30, 2016 (81 FR 42478) and requesting comments post-promulgation. The Bureau issued a final rule affirming the catch-up adjustments set forth in the interim final rule on December 2, 2016 (81 FR 86953). The final rule adjusted the following civil monetary penalties, effective on August 1, 2016:

| CFR Citation | Description of Penalty | Current Penalty | Catchup Adjustment Multiplier | Adjusted Penalty |
|---------------|---|-----------------|-------------------------------|------------------|
| 25 CFR 140.3 | Penalty for trading in Indian country without a license | \$500 | 2.50000 | \$1,250 |
| 25 CFR 141.50 | Penalty for trading on Navajo, Hopi or Zuni reservations without a license | \$500 | 2.50000 | \$1,250 |
| 25 CFR 211.55 | Penalty for violation of leases of Tribal land for mineral development, violation of part 211, or failure to comply with a notice of noncompliance or cessation order | \$1,000 | 1.50245 | \$1,502 |
| 25 CFR 213.37 | Penalty for failure of lessee to comply with lease of restricted lands of members of the Five Civilized Tribes in Oklahoma for mining, operating regulations at part 213, or orders | \$500 | 2.50000 | \$1,250 |
| 25 CFR 225.37 | Penalty for violation of minerals agreement, regulations at part 225, other applicable laws or regulations, or failure to comply with a notice of noncompliance or cessation order | \$1,000 | 1.59089 | \$1,591 |
| 25 CFR 226.42 | Penalty for violation of lease of Osage reservation lands for oil and gas mining or regulations at part 226, or noncompliance with the | \$500 | 1.78156 | \$891 |

| | | | | |
|------------------|---|---------|---------|---------|
| | Superintendent's order | | | |
| 25 CFR 226.43(a) | Penalty per day for failure to obtain permission to start operations | \$50 | 1.78156 | \$89 |
| 25 CFR 226.43(b) | Penalty per day for failure to file records | \$50 | 1.78156 | \$89 |
| 25 CFR 226.43(c) | Penalty for each well and tank battery for failure to mark wells and tank batteries | \$50 | 1.78156 | \$89 |
| 25 CFR 226.43(d) | Penalty each day after operations are commenced for failure to construct and maintain pits | \$50 | 1.78156 | \$89 |
| 25 CFR 226.43(e) | Penalty for failure to comply with requirements regarding valve or other approved controlling device | \$100 | 1.78156 | \$178 |
| 25 CFR 226.43(f) | Penalty for failure to notify Superintendent before drilling, redrilling, deepening, plugging, or abandoning any well | \$200 | 1.78156 | \$356 |
| 25 CFR 226.43(g) | Penalty per day for failure to properly care for and dispose of deleterious fluids | \$500 | 1.78156 | \$891 |
| 25 CFR 226.43(h) | Penalty per day for failure to file plugging and other required reports | \$50 | 1.78156 | \$89 |
| 25 CFR 227.24 | Penalty for failure of lessee of certain lands in Wind River Indian Reservation, Wyoming, for oil and gas mining to comply with lease provisions, operating regulations, regulations at part 227, or orders | \$500 | 2.50000 | \$1,250 |
| 25 CFR 243.8 | Penalty for non-Native transferees of live Alaskan reindeer who violates part 243, takes reindeer without a permit, or fails to abide by permit terms. | \$5,000 | 1.17858 | \$5,893 |
| 25 CFR 249.6(b) | Penalty for fishing in violation of regulations at part 249 (Off-Reservation Treaty Fishing). | \$500 | 2.50000 | \$1,250 |

II. Calculation of Annual Adjustments

OMB recently issued guidance to assist Federal agencies in implementing the annual adjustments required by the Act which agencies must complete by January 15, 2017. *See* December 16, 2016, Memorandum for the Heads of Executive Departments and Agencies, from

Shaun Donovan, Director, Office of Management and Budget, re: *Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (M-17-11). The guidance states that the cost-of-living adjustment multiplier for 2017, based on the Consumer Price Index (CPI-U) for the month of October 2016, not seasonally adjusted, is 1.01636. (The annual inflation adjustments are based on the percent change between the October CPI-U preceding the date of the adjustment, and the prior year's October CPI-U. For 2017, OMB explains, October 2016 CPI-U (241.729) / October 2015 CPI-U (237.838) = 1.01636.) The guidance instructs agencies to complete the 2017 annual adjustment by multiplying each applicable penalty by the multiplier, 1.01636, and rounding to the nearest dollar. Further, agencies should apply the multiplier to the most recent penalty amount that includes the catch-up adjustment required by the Act.

The annual adjustment applies to all civil monetary penalties with a dollar amount that are subject to the Act. This final rule adjusts the following civil monetary penalties contained in the Bureau's regulations for 2017 by multiplying 1.01636 (i.e., the cost-of-living adjustment multiplier for 2017) by each penalty amount as updated by the catch-up adjustment made in 2016:

| CFR Citation | Description of Penalty | Current Penalty Including Catchup Adjustment | Annual Adjustment (Multiplier) | Adjusted Penalty for 2017 |
|---------------|--|--|--------------------------------|---------------------------|
| 25 CFR 140.3 | Penalty for trading in Indian country without a license | \$1,250 | 1.01636 | \$1,270 |
| 25 CFR 141.50 | Penalty for trading on Navajo, Hopi or Zuni reservations without a license | \$1,250 | 1.01636 | \$1,270 |
| 25 CFR 211.55 | Penalty for violation of leases of Tribal land for mineral development, violation of part 211, or failure to comply with a | \$1,502 | 1.01636 | \$1,527 |

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|------------------|---|---------|---------|---------|
| | notice of noncompliance or cessation order | | | |
| 25 CFR 213.37 | Penalty for failure of lessee to comply with lease of restricted lands of members of the Five Civilized Tribes in Oklahoma for mining, operating regulations at part 213, or orders | \$1,250 | 1.01636 | \$1,270 |
| 25 CFR 225.37 | Penalty for violation of minerals agreement, regulations at part 225, other applicable laws or regulations, or failure to comply with a notice of noncompliance or cessation order | \$1,591 | 1.01636 | \$1,617 |
| 25 CFR 226.42 | Penalty for violation of lease of Osage reservation lands for oil and gas mining or regulations at part 226, or noncompliance with the Superintendent's order | \$891 | 1.01636 | \$906 |
| 25 CFR 226.43(a) | Penalty per day for failure to obtain permission to start operations | \$89 | 1.01636 | \$90 |
| 25 CFR 226.43(b) | Penalty per day for failure to file records | \$89 | 1.01636 | \$90 |
| 25 CFR 226.43(c) | Penalty for each well and tank battery for failure to mark wells and tank batteries | \$89 | 1.01636 | \$90 |
| 25 CFR 226.43(d) | Penalty each day after operations are commenced for failure to construct and maintain pits | \$89 | 1.01636 | \$90 |
| 25 CFR 226.43(e) | Penalty for failure to comply with requirements regarding valve or other approved controlling device | \$178 | 1.01636 | \$181 |
| 25 CFR 226.43(f) | Penalty for failure to notify Superintendent before drilling, redrilling, deepening, plugging, or abandoning any well | \$356 | 1.01636 | \$362 |
| 25 CFR 226.43(g) | Penalty per day for failure to properly care for and dispose of deleterious fluids | \$891 | 1.01636 | \$906 |
| 25 CFR 226.43(h) | Penalty per day for failure to file plugging and other required reports | \$89 | 1.01636 | \$90 |
| 25 CFR 227.24 | Penalty for failure of lessee of certain lands in Wind River Indian Reservation, Wyoming, for oil and | \$1,250 | 1.01636 | \$1,270 |

| | | | | |
|-----------------|--|---------|---------|---------|
| | gas mining to comply with lease provisions, operating regulations, regulations at part 227, or orders | | | |
| 25 CFR 243.8 | Penalty for non-Native transferees of live Alaskan reindeer who violates part 243, takes reindeer without a permit, or fails to abide by permit terms. | \$5,893 | 1.01636 | \$5,989 |
| 25 CFR 249.6(b) | Penalty for fishing in violation of regulations at part 249 (Off-Reservation Treaty Fishing). | \$1,250 | 1.01636 | \$1,270 |

Consistent with the Act, the adjusted penalty levels for 2017 will take effect immediately upon the effective date of the adjustment. The adjusted penalty levels for 2017 will apply to penalties assessed after that date including, if consistent with agency policy, assessments associated with violations that occurred on or after November 2, 2015. The Act does not, however, change previously assessed penalties that the Bureau is collecting or has collected. Nor does the Act change an agency's existing statutory authorities to adjust penalties.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that

regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the rule makes adjustments for inflation.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175 and Departmental policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information see 43 CFR 46.210(i).) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of this Regulation

We are required by Executive Orders 12866 (section 1 (b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "ADDRESSES" section. To better help us revise the rule, your comments

should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

M. Administrative Procedure Act

The Act requires agencies to publish annual inflation adjustments by no later than January 15, 2017, and by no later than January 15 each subsequent year, notwithstanding section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). OMB has interpreted this direction to mean that the usual APA public procedure for rulemaking—which includes public notice of a proposed rule, an opportunity for public comment, and a delay in the effective date of a final rule—is not required when agencies issue regulations to implement the annual adjustments to civil penalties that the Act requires. Accordingly, we are issuing the 2017 annual adjustments as a final rule without prior notice or an opportunity for comment and with an effective date immediately upon publication in the Federal Register.

Section 553(b) of the Administrative Procedure Act (APA) provides that, when an agency for good cause finds that “notice and public procedure...are impracticable, unnecessary, or contrary to the public interest,” the agency may issue a rule without providing notice and an opportunity for prior public comment. Under section 553(b), the Bureau finds that there is good cause to promulgate this rule without first providing for public comment. It would not be possible to meet the deadlines imposed by the Act if we were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule. Also, the Bureau is promulgating this final rule to implement the statutory directive in the Act, which requires agencies to publish a final rule and to update the civil penalty amounts by applying a specified formula. The Bureau has no discretion to vary the amount of the adjustment

to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to provide an opportunity for public comment on this rule prior to promulgation. Thus, providing for notice and public comment is impracticable and unnecessary.

Furthermore, the Bureau finds under section 553(d)(3) of the APA that good cause exists to make this final rule effective immediately upon publication in the Federal Register. In the Act, Congress expressly required Federal agencies to publish annual inflation adjustments to civil penalties in the Federal Register by January 15, 2017, and not later than January 15 of every subsequent year, notwithstanding section 553 of the APA. Under the statutory framework and OMB guidance, the new penalty levels take effect immediately upon the effective date of the adjustment. The statutory deadline does not allow time to delay this rule's effective date beyond publication. Moreover, an effective date after January 15 would delay application of the new penalty levels, contrary to Congress's intent.

List of Subjects

25 CFR 140

Business and industry, Indians, Penalties.

25 CFR 141

Business and industry, Credit, Indians-business and finance, Penalties.

25 CFR 211

Geothermal energy, Indians-lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR 213

Indians-lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR 225

Geothermal energy, Indians-lands, Mineral resources, Mines, Oil and gas exploration, Penalties, Reporting and recordkeeping requirements, Surety bonds.

25 CFR 226

Indians-lands.

25 CFR 227

Indians-lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR 243

Indians, Livestock.

25 CFR 249

Fishing, Indians.

For the reasons given in the preamble, the Department of the Interior amends Chapter 1 of title 25 Code of Federal Regulations as follows.

Title 25—Indians

Chapter 1—Bureau of Indian Affairs,

Department of the Interior

PART 140 – LICENSED INDIAN TRADERS

1. The authority citation for part 140 is revised to read as follows:

Authority: Sec. 5, 19 Stat. 200, sec. 1, 31 Stat. 1066 as amended; 25 U.S.C. 261, 262; 94 Stat. 544, 18 U.S.C. 437; 25 U.S.C. 2 and 9; 5 U.S.C. 301; and Sec. 701, Pub. L. 114-74, 129 Stat. 599, unless otherwise noted.

§ 140.3 [Amended]

2. In § 140.3, remove “\$1,250” and add in its place “\$1,270”.

PART 141 – BUSINESS PRACTICES ON THE NAVAJO, HOPI AND ZUNI RESERVATIONS

3. The authority citation for part 141 is revised to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; and Sec. 701, Pub. L. 114-74, 129 Stat.

599, unless otherwise noted.

§ 141.50 [Amended]

4. In § 141.50, remove “\$1,250” and add in its place “\$1,270”.

PART 211 – LEASING OF TRIBAL LANDS FOR MINERAL DEVELOPMENT

5. The authority citation for part 211 is revised to read as follows:

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 347); Act of August 1, 1956 (70 Stat. 744); 25 U.S.C. 396a-g; 25 U.S.C. 2 and 9; and Sec. 701, Pub. L. 114-74, 129 Stat. 599, unless otherwise noted.

§ 211.55 [Amended]

6. In § 211.55(a), remove “\$1,502” and add in its place “\$1,527”.

PART 213 – LEASING OF RESTRICTED LANDS FOR MEMBERS OF FIVE CIVILIZED TRIBES, OKLAHOMA, FOR MINING

7. The authority citation for part 213 is revised to read as follows:

Authority: Sec. 2, 35 Stat. 312; sec. 18, 41 Stat. 426; sec. 1, 45 Stat. 495; sec. 1, 47 Stat. 777; 25 U.S.C. 356; and Sec. 701, Pub. L. 114-74, 129 Stat. 599. Interpret or apply secs. 3, 11, 35 Stat. 313, 316; sec. 8, 47 Stat. 779, unless otherwise noted.

§ 213.37 [Amended]

8. In § 213.37, remove “\$1,250” and add in its place “\$1,270”.

PART 225 – OIL AND GAS, GEOTHERMAL AND SOLID MINERALS AGREEMENTS

9. The authority citation for part 225 is revised to read as follows:

Authority: 25 U.S.C. 2, 9, and 2101-2108; and Sec. 701, Pub. L. 114-74, 129 Stat. 599.

§ 225.37 [Amended]

10. In § 225.37(a), remove “\$1,591” and add in its place “\$1,617”.

PART 226 – LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING

9. The authority citation for part 226 is revised to read as follows:

Authority: Sec. 3, 34 Stat. 543; secs. 1, 2, 45 Stat. 1478; sec. 3, 52 Stat. 1034, 1035; sec. 2(a), 92 Stat. 1660; and Sec. 701, Pub. L. 114-74, 129 Stat. 599.

§ 226.42 [Amended]

10. In § 226.42, remove “\$891” and add in its place “\$906”.

§ 226.43 [Amended]

11. In § 226.43:

a. Remove “\$89” each time it appears and add in each place “\$90” wherever it appears in this section.

b. In paragraph (e), remove “\$178” and add in its place “\$181”.

c. In paragraph (f), remove “\$356” and add in its place “\$362”.

d. In paragraph (g), remove “\$891” and add in its place “\$906”.

PART 227 – LEASING OF CERTAIN LANDS IN WIND RIVER INDIAN RESERVATION, WYOMING, FOR OIL AND GAS MINING

12. The authority citation for part 227 is revised to read as follows:

Authority: Sec. 1, 39 Stat. 519; and Sec. 701, Pub. L. 114-74, 129 Stat. 599, unless otherwise noted.

§ 227.24 [Amended]

13. In § 227.24, remove “\$1,250” and add in its place “\$1,270”.

PART 243 – REINDEER IN ALASKA

14. The authority citation for part 243 is revised to read as follows:

Authority: Sec. 12, 50 Stat. 902; 25 U.S.C. 500K; and Sec. 701, Pub. L. 114-74, 129 Stat. 599.

§ 243.8 [Amended]

15. In § 243.8(a) introductory text, remove “\$5,893” and add in its place “\$5,989”.

PART 249 – OFF-RESERVATION TREATY FISHING

16. The authority citation for part 249 is revised to read as follows:

Authority: 25 U.S.C. 2, and 9; 5 U.S.C. 301; and Sec. 701, Pub. L. 114-74, 129 Stat. 599, unless otherwise noted.

§ 249.6 [Amended]

17. In § 249.6(b), remove “\$1,250” and add in its place “\$1,270”.

Dated: January 11, 2017

Lawrence S. Roberts,
Principal Deputy Assistant Secretary – Indian Affairs.
[FR Doc. 2017-01076 Filed: 1/19/2017 8:45 am; Publication Date: 1/23/2017]